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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION
CLERK'S OFFICE

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

IN THE MATTER OF THE APPLICATION OF
UTILITY SYSTEMS, LLC, DBA GARDNER
WATER COMPANY FOR A PERMANENT
RATE INCREASE.

DOCKET NO. W-20459A-08-0167

PROCEDURAL ORDER

BY THE COMMISSION:

On March 21, 2008, Utility Systems, LLC, ("Utility Systems") d/b/a Gardner Water Company ("Company" or "Gardner") filed with the Arizona Corporation Commission ("Commission") an application for an increase in its water rates.

Utility Systems owns another water company, Christopher Creek Haven Water Company ("Christopher Creek"). Utility Systems is owned by Jeff and Diane Daniels.

On April 17, 2008, the Commission's Utilities Division ("Staff") filed an Insufficiency Letter indicating the Company's application had not met the sufficiency requirements as outlined in the Arizona Administrative Code ("A.A.C."), and provided Gardner with Staff's First Set of Data Requests.

On May 19, 2008, the Company filed its responses to Staff's data requests.

On June 19, 2008, Staff filed its Second Letter of Deficiency and Second Set of Data Requests, and on July 9, 2008, the Company responded to the data requests.

On August 7, 2008, Staff filed its Third Letter of Deficiency and Third Set of Data Requests, and on August 22, 2008, the Company responded to the data requests.

On September 22, 2008, Staff filed a Letter of Sufficiency in this matter, and indicated that the Staff Report would be filed by November 21, 2008. Staff determined that Gardner is a Class E utility and pursuant to A.R.S. § 40-250(A) the Commission may decide this case without a hearing.

On November 21, 2008, Staff filed a Motion to Suspend Timeclock for 30 Days. The Company did not object to the request.

1 By Procedural Order dated December 3, 2008, Staff was granted until December 22, 2008, to
2 file its Staff Report and the deadline in this matter was extended accordingly.

3 On December 5, 2008, the Company filed correspondence relating to work performed by Mr.
4 Daniels on its behalf.

5 On December 22, 2008, Staff filed its Staff Report recommending approval of Staff's rates
6 and charges.

7 On January 28, 2009, a Procedural Order was issued directing the Company to file its
8 Responses to the Staff Report by February 10, 2009, and directing Staff to file its Reply to the
9 Responses by February 17, 2009, and setting a Procedural Conference for February 20, 2009.

10 On February 10, 2009, the Company filed its Responses to the Staff Report.

11 On February 18, 2009, Staff filed its Reply.

12 At the Procedural Conference held on February 20, 2009, both parties indicated that they did
13 not wish to have a hearing in this matter, each asserting that their respective positions had been fully
14 vetted in their filings.

15 On February 26, 2009, the Company filed additional comments to Staff's Reply.

16 Further review of the current and past dockets involving Gardner raises certain questions and
17 possible inconsistencies which should be addressed before a Recommended Order may be issued.

18 IT IS THEREFORE ORDERED that Staff shall address the following issues in a
19 **Supplemental Staff Report to be filed no later than September 4, 2009.** In addressing these
20 issues, Staff should confer with the Staff assigned to the Christopher Creek rate application, Docket
21 No. W-20459A-08-0168, for consistency purposes.

22 1. The Staff Report in Docket No. W-03880A-02-0462, Christopher Creeks' previous
23 rate proceeding, (Decision No. 65353 (November 1, 2002)), explicitly allocated certain assets of
24 Utility Systems between Christopher Creek and Gardner. A review of both the Staff Reports in the
25 current Christopher Creek and Gardner rate cases indicates that the prior allocation may not have
26 been considered in calculating the value of shared assets for rate base determination in the pending
27 cases. Staff in each matter should confer and make a determination if the previous allocation remains
28 appropriate and shall update the Staff Reports to reflect their current recommendations for asset

1 allocation and its effect on plant values, depreciation, and rate base. Staff should consult whatever
2 records it may have in its possession regarding date in service for Company assets.

3 2. Staff should contact the prior owner, Gerald Lenzion, and request that he provide to
4 Staff copies of all records he has in his possession regarding Gardner, not just those records that he
5 may have already provided to Mr. Daniels.¹

6 3. Staff should consider whether Christopher Creek and Gardner should be consolidated
7 for purposes of setting rates. Staff shall make a recommendation regarding this issue, listing the
8 reasons behind such recommendation.

9 4. In Decision No. 63199, (November 30, 2009), a matter involving a prior sale of
10 Gardner, the Commission *sua sponte* approved the inclusion of the purchase price of the water
11 system as long-term debt. In the current matter, Mr. Daniels requests that the Commission again
12 include the purchase price as long-term debt. Staff has recommended that the Commission deny this
13 request. Staff should explain why it recommends the Commission not recognize the acquisition debt
14 in this case.

15 5. Staff should make a recommendation as to whether the Company should be required
16 to hire a professional accountant or bookkeeper to aid the Company in complying with the NARUC
17 USOA. If Staff makes such recommendation, it should include an allocation of the expense between
18 the two companies.

19 6. Because Christopher Creek and Gardner are owned by Utility Systems, some of the
20 customer comments received by Staff for Christopher Creek and Gardner may have been attributed to
21 the incorrect Company. Staff should review the customer comments to determine the correct number
22 of comments for each Company.

23 7. Upon review and analysis of the above-required information, Staff should revise its
24 recommended rates and charges accordingly, if necessary or appropriate.

25 **IT IS FURTHER ORDERED that the Company shall file its Responses to the**
26 **Supplemental Staff Report no later than September 25, 2009.**

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28 ¹ In a previous matter regarding the sale of the water company from the Gardner family to JNJ Enterprises, Staff had
requested records from the Gardners to assist Staff in their efforts.

1 IT IS FURTHER ORDERED that, based on the information provided in the Supplemental
2 Staff Report and the Responses to the Supplemental Staff Report, the parties may be required to
3 appear for a hearing on this matter, should such proceeding be necessary.

4 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
5 Communications) continues to apply to this proceeding.

6 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
7 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission *pro*
8 *hac vice*.

9 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
10 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
11 Rules of Arizona Supreme Court). Representation before the Commission includes the obligation to
12 appear at all hearings and procedural conferences, as well as all Open Meetings for which the matter
13 is scheduled for discussion, unless counsel has previously been granted permission to withdraw by
14 the Administrative Law Judge or the Commission.

15 IT IS FURTHER ORDERED that the timeclock in this matter has been suspended.

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1 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend or waive
2 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

3 Dated this 2nd day of July, 2009.


4
5 
6 BELINDA A. MARTIN
7 ADMINISTRATIVE LAW JUDGE

8 Copies of the foregoing mailed/delivered
9 this 2nd day of July, 2009 to:

10 Jeffrey Daniels
11 UTILITY SYSTEMS, LLC, DBA
12 GARDNER WATER COMPANY
13 HC 2 Box 164-H
14 Payson, Arizona 85541

15 Janice Alward, Chief Counsel
16 Legal Division
17 ARIZONA CORPORATION COMMISSION
18 1200 West Washington Street
19 Phoenix, Arizona 85007

20 Ernest G. Johnson
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
23 Phoenix, Arizona 85007

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27
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By: 
Debra Broyles
Secretary to Belinda A. Martin